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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,493	01/04/2006	Philippe Chavignac	SAIME 3.3-001	8275
530 7590 11/18/2009 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090				
EXAMINER THANH, QUANG D				
ART UNIT		PAPER NUMBER		
3771				
MAIL DATE		DELIVERY MODE		
11/18/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,493

Applicant(s)

CHALVIGNAC, PHILIPPE

Examiner

Quang D. Thanh

Art Unit

3771

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7, 9, 10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 9-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/23/09 has been entered.

This office action is responsive to the amendment filed on 10/23/09. As directed by the amendment: Claims 1, 3-4, 7, 9-10, 12-13, 15 and 17-19 have been amended. Claims 5-6, 8 and 11 have been canceled and new Claim 20 has been added. Thus, claims 1-4, 7, 9-10 and 12-20 are presently pending in this application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 7, 9-10, 12-14 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kullik et al. (US 2003/0172930 A1).

4. Regarding claim 1, Kullik et al. discloses a device comprising: a source of respiratory pressurized gas (3) wherein gas source is a ventilator having at least an inlet rotor ([0015], "blades"); a breathing connection (2) for allowing the patient to receive

pressurized gas; at least one sensor (10) for acquiring a parameter representative of the operation of the device; a central control unit (6) for operating the device in at least one airway pressure ventilation mode based on information from said at least one sensor ([0018]), wherein said ventilator is integrated into a removable module 3 (figs. 1-2) removably connectable to the breathing connection, wherein the breathing connection is a mask (2) such that the removable module is directly connectable to the mask (fig. 2), and wherein said at least one sensor 10 for acquiring a parameter representative of the operation of the device is located in the removable module 3 at a position downstream of the inlet rotor of the ventilator (fig. 2).

5. Regarding claim 2, Kullik et al. discloses a removable module comprising a pressure sensor of respiratory gas and a flow sensor ([0018]).

6. Regarding claim 7, Kullik discloses in figure 2, the mask (2) not having means allowing leaks. Examiner also notes that the mask can avoid leaks depending on the tightness or the fitting of the mask to the user.

7. Regarding claims 9 and 10, Kullik discloses in fig. 2 an ensemble formed by the breathing connection and the removable module is linked with a link (4) to a control console (6) of the device integrating the central control unit ; wherein said link (4) allowing data to be transmitted between the ensemble and the central control unit (see para. 16).

8. Regarding claim 12, Kullik discloses a link (4) helping to convey energy (5) required to operate components of the removable module from the console to the ensemble (see para. 16).

9. Regarding claim 13, Kullik discloses a link (4) being a wired link (Figure 1).
10. Regarding claim 14, Kullik discloses a ventilator being an axial ventilator (see para. 14, lines 11-13).
11. Regarding claim 18-19, the device of Kullik is capable of performing in a BPAP or CPAP mode, depending on the need of the user since Kullik's device comprises controller for controlling the pressure and speed of the ventilator motor (see para. 19).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kullik in view of Chen (20030066527). Kullik discloses the claimed invention except for the removable module is fixable on the device or on the mask by a removable connection or fastening means. However, Chen teaches a removable connection comprising a thread pitch on the fastener (54) (see figure 5). 19). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Kullik's device to include a removable connection as taught by Chen for the purpose of providing easier removable of the module.
14. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kullik et al. in view of Jay (6050262).

15. Regarding claim 15, Kullik does not expressly disclose the rotor of the axial ventilator being a single staged. However, Jay teaches a removable module (8) with a single stage rotor (10) (see figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the module of Kullik with a module comprising a single stage rotor as taught by Jay for easier manufacturing.

16. Regarding claim 16, the modified reference of Kullik discloses (see figure 1-2 of Jay) the input (28) and output (6) of respiratory gas being substantially parallel (see arrow in figure 2).

17. Regarding claim 17, the modified reference of Kullik discloses (see figure 2 of Jay), an input (28) substantially aligned with an axis of rotation of a rotor (10) of the ventilator (8), an outlet (18) allowing flux generated by rotor to be collected according to an oblique direction relative to axis of rotation (see airflow in Figure 2), and means for rectifying flux that is generated and collected, so that the generated and collected flux flows out of the ventilator in a general direction substantially parallel to axis of rotation of the rotor of the ventilator (see the airflow coming out of connector (6) in Figure 2).

18. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kullik in view of Frank et al. (US 6467477). Kullik does not expressly disclose a wireless link. However, Frank teaches that it is well known in the art to use wireless link (col. 5, lines 50-53) for providing communication between the controller and the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was

made to modify the device of Kullik to include such wireless link as taught by Frank in order to allow the user to operate the device unencumbered by wires as desired.

Response to Arguments

19. Applicant's arguments with respect to claims 1-4, 7, 9-10 and 12-19 have been considered but are moot in view of the new ground(s) of rejection.

20. In response to applicant's argument that "paragraph [0018] of Kullik appears to disclose that the sensor 10 is located in the breathing mask 2 of the Kullik device", applicant's attention is directed to paragraph [0018], line 4, which clearly states that the sensor "is optionally located in the breathing mask 2" and therefore does not limit the sensor to be only located in the breathing mask.

21. In response to applicant's argument that "Kullik does not appear to disclose or suggest a breathing assistance device having a sensor for acquiring a parameter representative of operation of the device in a removable module into which a ventilator is integrated, and that the sensor is located within the removable module at a position downstream of an inlet rotor of the ventilator", the examiner respectfully disagrees. Kullik in fig. 2 clearly shows that the sensor 10 is located within the removable module 3 at a position downstream of an inlet rotor of the ventilator.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang D. Thanh/
Primary Examiner, Art Unit 3771